

## **TITLE 5 PROCUREMENT CODE**

### Chapters:

- 5-1 Purpose, Application and Definitions
  - 5-2 General Provisions
  - 5-3 Methods and Procedures for Procurement
  - 5-4 Appeals and Remedies
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## **CHAPTER 5-1**

### **PURPOSE, APPLICATION AND DEFINITIONS**

Sections:

- 5-1-101. Purpose.
- 5-1-102. Application.
- 5-1-103. Definitions.

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#### **5-1-101. PURPOSE.**

The purpose of this Title is to set forth a procedure governing purchasing that benefits the City and its citizens, provides for the economical and efficient purchase of goods and services, and maximizes the purchasing power of public funds.

**(Ord. No. 03-07 Amended 01/21/2003)**

#### **5-1-102. APPLICATION.**

This Title applies to the procurement of supplies, services, and construction. It shall apply to every expenditure of public funds by the City for public purchasing irrespective of the source of the funds. When the procurement involves the expenditure of federal assistance or grant funds, the procurement shall be conducted in accordance with any mandatory applicable federal law and regulation and this Title. Nothing in this Ordinance shall prevent the City from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

**(Ord. No. 03-07 Amended 01/21/2003)**

#### **5-1-103. DEFINITIONS.**

- (1) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (2) Business Day. Any day when the City administration offices are open for public business.
- (3) Construction. The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine repair or routine maintenance of existing structures, buildings, or real property.
- (4) Contractor. Any person having an agreement with the City.
- (5) Department. Any City department, commission, board, or agency requiring the procurement of supplies, services, or construction pursuant to this Ordinance.
- (6) Employee. An individual drawing a salary or wages from the City, whether elected or not; any non-compensated individual performing personal services for the City or any Department, agency, commission, council board, or any other entity established by the executive or legislative branch of the City; and any individual serving as an elected official of the City.
- (7) Invitation for Bids. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.
- (8) Person. Any business, individual, union, committee, club, other organization, or group of individuals.

- (9) Procurement. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of agreement, and all phases of agreement administration.
- (10) Professional Services. Those services that are provided by a Person skilled in the practice of a learned or technical discipline. Providers of professional services often require prolonged and specialized intellectual training, and profess attainments in special knowledge as distinguished from mere skills. Disciplines may include, but are not limited to, accounting, auditing, court reporting, experts in a specialized field, finance, law, materials testing, medicine, and others.
- (11) Public Agency. A public entity subject to or created by the City.
- (12) Purchasing Agent. The Person or Persons designated in this Ordinance to procure supplies, services, or construction on behalf of the City.
- (13) Request for Proposals or RFP. All documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- (14) Responsible Bidder or Offeror. A Person who has the capability in all respects to perform fully the Agreement requirements, and the experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.
- (15) Responsive Bidder. A person who has submitted a bid which conforms in all material respects to the requirements set forth in the Invitation for Bids.
- (16) Services. The furnishing of labor, time, or effort by any Person, including Professional Services, but excluding the work of a construction manager, employment by the City or employment by any vendor.
- (17) Supplies. All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

**(Ord. No. 03-07 Amended 01/21/2003)**

## **CHAPTER 5-2 GENERAL PROVISIONS**

### Sections:

- 5-2-101. Purchasing Agents.
- 5-2-102. Authority to Use Pre-approved Forms / Authority of City Manager to Sign Some Items.
- 5-2-103. Bid Evaluation.
- 5-2-104. Responsibility of Bidders and Offerors.
- 5-2-105. Right to Inspect Facility and Audit Records.
- 5-2-106. Reporting of Anticompetitive Practices.
- 5-2-107. Pre-qualification.
- 5-2-108. City Provider Preference.

### **5-2-101. PURCHASING AGENTS.**

- (1) The City's Purchasing Agent shall be the supervisor of the Purchasing Division, as established by Title 3 of the City Code. The Finance Director or the City Manager or their designee may also act as the Purchasing Agent at any time. With the approval of the City Manager, the Purchasing Agent may delegate authority to purchase certain supplies, services, or construction items to other City officials, if such delegation is deemed necessary for the effective procurement of those items.
- (2) Except as otherwise provided herein, the Purchasing Agent shall be responsible for the procurement of all supplies and services in accordance with this Ordinance.
- (3) Duties. In accordance with this Ordinance, and subject to the supervision of the Finance Director and the City Manager, the Purchasing Agent shall:
  - a. procure or supervise the procurement of all supplies, and services needed by the City;
  - b. sell, trade, or otherwise dispose of surplus supplies belonging to the City; and
  - c. in cooperation with the City Department using the supplies and services, establish and maintain programs for bid specifications, specification development, inspection, review and acceptance.

**(Ord. No. 03-07 Added 01/21/2003)**

### **5-2-102. AUTHORITY TO USE PRE-APPROVED FORMS / AUTHORITY OF CITY MANAGER TO SIGN SOME ITEMS.**

- (1) The City Council may authorize the City Manager to sign any agreement, purchase order, obligation, form, or other document that has been approved as to form by the City Council. In addition, the City Manager or their designee has the authority to sign all documents necessary to allow the City to make Minimal (Section 5-3-103) and Small Purchases (Section 5-3-104). Any document signed by the City Manager pursuant to this Section must also be countersigned by a facsimile signature of the Mayor and attested by the City Recorder.
- (2) Based upon a determination by the Purchasing Agent, the City may utilize an electronic bid process, so long as such process provides for substantially the same purchasing protection provided herein.

**(Ord. No. 03-07 Added 01/21/2003; Ord. No. 09-14 Amended 05/31/2009)**

## **5-2-103. BID EVALUATION.**

- (1) Generally. Bids, proposals, and related matters shall be evaluated using the criteria in this Chapter.
- (2) City's Evaluation Process. When evaluating matters, the City shall consider the following:
  - a. Solicitation Criteria. The City shall consider the evaluation criteria stated in a bid or proposal package or other solicitation document.
  - b. Chapter Criteria. As further described in this Chapter, the City shall consider whether a bid, proposal or other offer or submission is responsive to the City's request, whether the bidder or offeror is responsible, and whether any element conflicts with the other criteria of this Chapter.
    - i. Due Diligence. The City may take steps as it deems appropriate to verify and determine any matter. The City shall determine in its sole discretion what steps may be appropriate in light of the matters being considered and the resources of the City. The failure to discover any matter shall not preclude any subsequent evaluation or action.
    - ii. Records . In the manner it shall determine, the Purchasing Agent shall retain in procurement file records relevant to a solicitation or award.
    - iii. Evaluating Responsiveness. To be responsive, a bid, proposal or other offer or submission must conform in all material respects to the terms of the City's solicitation documents. Such terms may include, but are not limited to, using bid forms, mandatory submittals, required securities, and appropriate substantive responses. Ministerial errors and other matters in a bid, proposal or other offer or submission will not necessarily render it non-responsive, and the Purchasing Agent shall review such matters and determine whether the submission is responsive. The Purchasing Agent may evaluate responsiveness based on any additional reasonable criteria.
    - iv. Evaluating Responsibility. To be responsible, a bidder or offeror must have the capability in all respects to fully perform the Agreement requirements, and the integrity, capacity and reliability which will assure good faith performance.
    - v. Factors . The City may consider any relevant factors when evaluating responsibility, including the following:
      1. The bidder's capacity to perform the contractual requirements, including whether the bidder has available appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them. Without limitation, capacity may also include legal capacity to enter Agreements, the ability to perform within required times, or the ability to perform any necessary future service and maintenance.
      2. The bidder's ability, skill and quality of performance.
      3. The bidder's character, integrity, reputation, judgment, experience and efficiency.
      4. The bidder's ability to work cooperatively with the City, including, without limitation, whether the bidder has previously failed to comply with City Agreements or other requirements, nonpayment of sums due to the City, poor working relationships with or adversarial actions against the City, suspension, or other proceedings by the City against the bidder, or failure to assist the City in determining responsibility.

- vi. Making a Determination. The submission of any bid, proposal or other offer or submission constitutes an agreement by the bidder or offeror to reasonably assist the City with its determination of responsibility.
- vii. Effect of Determination. The City's determination of responsibility relates solely to a bidder's overall ability to perform for a specific procurement, and is not a general assessment of a bidder's capabilities.
- viii. Evaluating Specific Matters. For any bid, proposal, other offer, or submission:
  - 1. Tie Bids. Tie bids occur when identical prices are submitted from responsive and responsible bidders and that price is the low bid. The Purchasing Agent shall make an award in a manner that is beneficial to the City, and may make an award in manner that will discourage tie bids. Such may include:
    - a. Award to the Person closest to the point of delivery.
    - b. Award to the Person who previously held the Agreement.
    - c. Award to the Person with the earliest delivery date.
  - 2. Only One Received. If the City receives only one responsive bid, proposal or other offer or submission, the City may make an award to that bidder or offeror if the Purchasing Agent determines the bid, proposal or other offer or submission is fair and reasonable and conforms to all applicable requirements, and that other prospective bidders or offerors had reasonable opportunity to respond or that there is not adequate time for a resolicitation. The written determination and basis for decision shall be placed in the procurement file. The City may also reject the sole bid, proposal or other offer or submission.
- ix. Inspections and Tests. The City may perform inspections, tests and other evaluations in any manner conducive to the City's interest, including, without limitation, the use of third parties. All prospective and actual recipients of a bid or agreement shall provide all reasonable assistance and information required by the City to perform an inspection, test or other evaluation.
- x. Modifying Submissions. After the time for submission, a bid, proposal or other offer or submission may be modified as follows:
  - 1. Confirmation of Bid, Proposal or Other Matter. When it appears a mistake has been made, or when the City desires an assurance of any matter, the City may request a bidder or offeror to confirm the bid, proposal or other offer or submission in writing.
  - 2. Notification of Error. A bidder or offeror shall notify the Purchasing Agent of any error contained in a bid, proposal or other offer or submission within two business days after bid opening or the time for submitting proposals unless the Purchasing Agent waives this requirement. The Purchasing Agent shall have sole discretion to determine whether to permit any modification or withdrawal.
  - 3. Modifications by Agreement. The Purchasing Agent may agree with a bidder or offeror to any modifications so long as they do not prejudice fair competition or the City's interests. Modifications may include such matters as:
    - a. Time for Accepting. The Purchasing Agent and bidder or offeror may agree that a bid, proposal or other offer or submission will

remain effective for a longer period of time than that stated in the bid, proposal or other offer or submission.

- b. Subcontractor or Supplier Changes. Any proposed change in subcontractors or suppliers must be submitted to the Purchasing Agent, and the Purchasing Agent may reject any such proposed change. The bidder or offeror will receive no additional compensation as a result of a change to any subcontractors or suppliers, and must continue to meet the requirements of any federally-mandated program and other contractual and legal requirements.
- c. Change in Specifications. The Purchasing Agent and bidder or offeror may agree to a change in specifications when such change is in the City's interest, is reasonably related to the work originally solicited, and would not be prejudicial to fair competition.
- d. City's Correction of Ministerial Mistakes. The Purchasing Agent may at any time correct mistakes in a bid or proposal that are of a ministerial or minor nature as follows:
  - i. Ministerial Mistakes. Ministerial or minor informalities are clerical errors and matters of form rather than substance that are evident from the document, or insignificant mistakes or informalities that can be waived or corrected without prejudice to other bidders or offerors. They generally do not have a substantial effect on price. Examples include a failure to:
    - 1. Sign the bid, proposal, or other submissions requiring signature, but only where they are accompanied by other materials indicating an intent to be bound.
    - 2. Acknowledge receipt of an addendum, but only if the materials demonstrate the bidder or offeror received the addendum and intended to be bound by it, or the addendum has a negligible effect on the bid, proposal or other offer or submission.
    - 3. Mistakes Where Intent is Evident. If the intent of the bid, proposal or other offer or submission is clearly evident on the face of the document, the Purchasing Agent shall correct it as intended and it may not be withdrawn. Examples include:
      - a. Typographical errors.
      - b. Errors in extending unit prices.
      - c. Transposition errors.
      - d. Arithmetical errors.
      - e. Differences in written and numerical prices (written shall control).
    - 4. Mistakes Where Intent Not Evident. If the bidder or offeror's intent is not clearly evident

on the face of the document, the bid, proposal or other offer or submission may not be withdrawn except as agreed by the Purchasing Agent.

5. Correcting Errors in Judgment. Errors in judgment may not be corrected, and the bid, proposal or other offer or submission may not be withdrawn, except as agreed by the Purchasing Agent. The Purchasing Agent may allow correction of an error in judgment if it can be done without prejudice to other bidders or offerors. The Purchasing Agent may allow withdrawal if it is in the City's interest.

**(Ord. No. 03-07 Add 01/21/2003)**

#### **5-2-104. RESPONSIBILITY OF BIDDERS AND OFFERORS.**

Bid and Performance Bonds on Supply or Service Contracts. Bid and performance bonds or other security may be requested for supply agreements or service agreements as the Purchasing Agent deems advisable to protect the City's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

**(Ord. No. 03-07 Add 01/21/2003)**

#### **5-2-105. RIGHT TO INSPECT FACILITY AND AUDIT RECORDS.**

- (1) The City may, at reasonable times, inspect the part of the plant, place of business, or worksite of a contractor or subcontractor at any tier which is pertinent to the performance of any Agreement awarded or to be awarded by the City.
- (2) The City may, at reasonable times, audit the books, accounting and any applicable records of any contractor or subcontractor if applicable.

**(Ord. No. 03-07 Add 01/21/2003)**

#### **5-2-106. REPORTING OF ANTICOMPETITIVE PRACTICES.**

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the City Attorney's Office.

**(Ord. No. 03-07 Add 01/21/2003)**

#### **5-2-107. PRE-QUALIFICATION.**

Where deemed appropriate by the City, bidders, proponents and/or suppliers may be pre-qualified for particular types of supplies, services and construction to determine the responsibility of such bidder, proponent or suppliers.



- (1) Standard of Responsibility. Factors to be considered in determining whether the standard of responsibility has been met by a bidder, supplier or proponent include:
  - a. Availability of the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them, necessary to indicate the capability of the bidder, proponent or supplier to meet all contractual requirements;
  - b. A satisfactory record of performance;
  - c. A satisfactory record of integrity;
  - d. Legal qualifications to contract with West Valley City; and
  - e. Whether all necessary information has been supplied in connection with the inquiry concerning responsibility.
- (2) Information Pertaining to Responsibility. The bidder, proponent or supplier shall supply information requested by the City concerning the responsibility of such bidder, proponent or supplier. If such information is not supplied, City shall base the determination of responsibility upon any available information or may find the bidder, proponent or supplier non-responsible if such failure, as determined by City, is unreasonable.

**(Ord. No. 03-07 Added 01/21/2003)**

## **5-2-108. CITY PROVIDER PREFERENCE.**

The City may include in any bid that it will give a preference to any provider physically located within City limits. The amount of such preference shall be determined by the City and included in all bid documents. Additionally, a purchase may be made without a bid, from any provider physically located within City limits that is able to provide a product or service at an amount that is within 1% of the State Bid amount for that product or service.

**(Ord. No. 09-14 Amended 05/31/2009)**

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## **CHAPTER 5-3 METHODS AND PROCEDURES FOR PROCUREMENT**

### Sections:

- 5-3-101. Competitive Sealed Bidding.
  - 5-3-102. Competitive Sealed Proposals.
  - 5-3-103. Minimal Purchases.
  - 5-3-104. Small Purchases.
  - 5-3-105. State Contract Purchasing.
  - 5-3-106. Government Agency Purchasing.
  - 5-3-107. Contracting for Designated Professional Services.
  - 5-3-108. Contracts with other Governmental Entities.
  - 5-3-109. Sole Source Procurement.
  - 5-3-110. Procurement to Meet Existing Needs.
  - 5-3-111. Very Specialized or Confidential Services.
  - 5-3-112. Emergencies, Public Threats and Unforeseen Conditions.
  - 5-3-113. Class "C" Road Improvement Projects.
  - 5-3-114. Design Build Transportation Project Contracts.
  - 5-3-115. Building Improvements and Public Works Projects.
  - 5-3-116. Municipal Building Authority Projects.
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### **5-3-101. COMPETITIVE SEALED BIDDING.**

- (1) Conditions for Use. All City Purchases shall be awarded and obtained by competitive sealed bidding except as otherwise provided in this Title.
- (2) Invitation for Bids. Each competitive sealed bid proceeding shall be commenced by the Purchasing Agent or designee issuing an invitation for bids, which shall include specifications, and all contractual terms and conditions applicable to the procurement and in compliance with this Title. All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the City's needs, and shall not be unduly restrictive. The policy enunciated in this Section applies to all specifications including, but not limited to, those prepared for the City by architects, engineers, designers, and draftsmen.
- (3) Public Notice. All noticing shall be processed through the City Recorder or designee. Adequate public notice of the invitation for bids shall be given for a reasonable time, and not less than five (5) working days prior to the date set forth therein for the opening of bids. Such notice may include publication in a newspaper of general circulation a reasonable time prior to bid opening. The public notice shall state the place, date, and time of bid opening.
- (4) Bid Opening. All bids shall be accepted and opened by the City Recorder or designee. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, the name of each bidder, and such other relevant information as the Purchasing Agent deems appropriate, shall be recorded; the record and each bid shall be open to public inspection.
- (5) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Ordinance. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include, but are not limited to,

criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

- (6) **Correction or Withdrawal of Bids; Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or Agreements based on such bid mistakes may be permitted by the Purchasing Agent where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written, telegraphic or facsimile notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After the bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
- a. the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
  - b. the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or Agreements based on bid mistakes, shall be supported by a written determination made by the Purchasing Agent.
- (7) **Award.** The Purchase shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, unless otherwise provided for in this ordinance.
- (8) **Multi-Step Sealed Bidding.** When it is considered impractical to prepare an initial purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
- (9) **Cancellation of Invitation for Bids.** An invitation for bids, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the City. Each solicitation issued by the City shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part when in the best interests of the City. Notice of cancellation shall be sent to all businesses responding. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

**(Ord. No. 03-07 Added 01/21/2003)**

### **5-3-102. COMPETITIVE SEALED PROPOSALS.**

- a. (1) **Conditions for Use.** When the Purchasing Agent determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the City, a Purchase may be made by use of the competitive sealed proposals method.

- (2) Request for Proposals. Competitive sealed proposals shall be solicited through a Request For Proposals (“RFP”).
- (3) Public Notice. Adequate public notice of the RFP shall be given in the same manner as provided in Section 5-3-101(3).
- (4) Receipt of Proposals. No proposal’s contents, except for the names of the offerors, shall be disclosed to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after award.
- (5) Evaluation Factors. The RFP shall state the relative importance of price and other evaluation factors, including the quantitative basis for evaluation. No criteria may be used in an RFP response evaluation that are not set forth in the RFP.
- (6) Discussion with Responsible Offerors and Revisions to Proposals. As provided in the RFP, discussions may be conducted with responsible offerors who submit proposals determined to have a reasonable chance of being selected in order to clarify and assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment to discuss and revise proposals in writing and such written revisions may be permitted by the selection committee after submissions and prior to award to obtain best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors, except for the names of the offerors.
- (7) Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the RFP. No other factors or criteria shall be used in the evaluation. The file shall contain the basis on which the award is made.
- (8) Cancellation of an RFP. An RFP, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interests of the City. Each solicitation issued by the City shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the City. Notice of cancellation shall be sent to all businesses responding. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

**(Ord. No. 03-07 Added 01/21/2003)**

### **5-3-103. MINIMAL PURCHASES.**

- a. (1) General. This Section defines minimal purchases and the rules governing them. These purchases may only be made by Employees who have been authorized as stated in this Chapter.
- (2) Applicability. This Section applies to the purchase of goods, supplies, materials, equipment or services, having a total value of not more than \$5,000.00. So long as funds used for such purchases are part of the approved annual budget for the department, City Council approval of Minimal Purchases is not required.
- (3) Who May Make Purchases. Only the Purchasing Agent, Department Heads and Employees designated by Department Heads shall make small purchases as defined in this Section.

- (4) How Minimal Purchases Are Made. Minimal purchases may be made by any reasonable means. Documentation shall be retained by the purchaser to demonstrate reasonableness.
- (5) Manipulation Prohibited. Purchases shall not be manipulated to fall within this Section. Without limitation, purchases shall not be artificially divided, such as by awarding numerous purchases to a single Person for substantially similar performances, or by dividing the work required for a single project solely for purposes of making use of this Section.

**(Ord. No. 03-07 Added 01/21/2003; Ord. No. 09-14 Amended 05/31/2009)**

### **5-3-104. SMALL PURCHASES.**

- (1) General. This Section defines small purchases and the rules governing them. These purchases can only be made by Employees who have been authorized as stated in this Chapter.
- (2) Applicability. This Section applies to the purchase of goods, supplies, materials, equipment or services, having a total value of not more than \$30,000.00, when such purchase is approved in writing in advance by the Department Head and the City Manager. So long as funds being used are available under the approved budget, City Council approval of Small Purchases is not required.
- (3) Who May Make Purchases. Only the Purchasing Agent, Department Heads and Employees designated by Department Heads shall make small purchases as defined in this Section. In making small purchases, the following procedures shall be used in lieu of a bid or proposal process:
  - a. Solicitation and Award. Purchases shall be made by soliciting bids from no fewer than three businesses. This solicitation may be completed in any reasonable manner including but not limited to telephone inquiry, internet or other price comparison. Award shall be made to the business offering the lowest acceptable quotation.
  - b. Records. Any Department making a small purchase shall retain a record of the names of the businesses contacted, those offering quotations, and the date and amount of each quotation, and shall document, either on the City's electronic purchasing system or by paper copy provided to the Purchasing Agent, all quotes received.
  - c. Manipulation Prohibited. Purchases shall not be manipulated to fall within this Section. Without limitation, purchases shall not be artificially divided, such as by awarding numerous purchases to a single Person for substantially similar performances, or by dividing the work required for a single project solely for purposes of making use of this Section.
- (4) Small Purchase Modifications and Renewals. Any Agreement solicited under this Chapter shall only be modified or renewed as follows:
  - a. Modifications. Contracts shall not be modified in excess of the maximum dollar amounts stated in this Chapter.
  - b. Renewals. Contracts shall not be renewed on a successive basis with the same party unless approved in writing by the Purchasing Agent.

**(Ord. No. 03-07 Added 01/21/2003; Ord. No. 09-14 Amended 05/31/2009)**

**5-3-105. STATE CONTRACT PURCHASING.**

Because an appropriate bid procedure has already been completed, any item that is a State contract item may be purchased without following the bid requirements set forth in this Section. However, purchases over \$30,000.00 will require formal City Council action and approval.

**(Ord. No. 03-07 Added 01/21/2003; Ord. No. 09-14 Amended 05/31/2009)**

**5-3-106. GOVERNMENT AGENCY PURCHASING.**

When purchasing supplies, material or equipment from a vendor who has been awarded a bid from another governmental entity within the preceding 90 days, the quoted price shall be deemed to be the lowest price available for such items and the City need not follow any other bidding requirements.

**(Ord. No. 03-07 Added 01/21/2003)**

**5-3-107. CONTRACTING FOR DESIGNATED PROFESSIONAL SERVICES.**

- (1) Authority. The City may procure the services of financial and legal advisors, architects, engineers, accountants, physicians, dentists, veterinarians, and construction managers as defined by the laws of the State of Utah, and similar professional services, in accordance with the selection procedures specified in this Section.
- (2) Selection Procedure. Professional services may be procured as negotiated based on demonstrated competence and qualification and at fair and reasonable prices.

**(Ord. No. 03-07 Added 01/21/2003)**

**5-3-108. CONTRACTS WITH OTHER GOVERNMENTAL ENTITIES.**

- (1) Generally. This Section applies to purchasing from government, including when agreements must be executed in compliance with the Interlocal Cooperation Act.
- (2) Solicitation Requirements when Contracting with Government. Whenever the City agrees to make purchases together with another governmental entity, and the agreement is entered in compliance with the solicitation procedures of that other entity, the City shall be deemed to have complied with City solicitation requirements.
- (3) Interlocal Cooperation Act. All agreements must be executed in compliance with the Interlocal Cooperation Act, Utah Code Title 11, Chapter 13, and the agreement must be approved by a Resolution of the City Council, except for those agreements not required to take this form.

**(Ord. No. 03-07 Added 01/21/2003)**

**5-3-109. SOLE SOURCE PROCUREMENT.**

- (1) Definition. Without limitation, sole source procurement may arise when:
  - a. The City needs a supply or service of a unique or specialized nature, and only one known supplier is reasonably available to meet the need.

- b. Specific parts, accessories, equipment, materials, services, proprietary items or other items are necessary to meet the City's needs, and there are no comparable items reasonably available.
  - c. Items are procured for resale.
- (2) Process. To use sole source procurement, the Purchasing Agent shall place a written determination in the procurement file after conducting a good faith review of available sources, stating why no other sources are reasonably available, or why competition would not be likely to produce other acceptable offers. Sole source procurement shall not be used only to accommodate a desire for a particular proprietary item unless the City has a need for such item, which can be justified in writing pursuant to the provisions of Subsection (1) of this Section, The Purchasing Agent shall negotiate and use appropriate means to obtain the best price available for the item being procured.

**(Ord. No. 03-07 Added 01/21/2003)**

### **5-3-110. PROCUREMENT TO MEET EXISTING NEEDS.**

- (1) Definition. Procurement to meet existing needs may arise when there is a need to procure matching or compatible supplies and services when other similar supplies and services would not be reasonably beneficial to meet the City's needs in connection with existing equipment or facilities.
- (2) Process. To use existing needs procurement, the Purchasing Agent shall place a written determination in the procurement file specifying the existing items, and explaining the need to match or service them. The Purchasing Agent, Department Head, or employee designated by Department Head, shall negotiate and use appropriate means to obtain the best price available for the item being procured.

**(Ord. No. 03-07 Added 01/21/2003)**

### **5-3-111. VERY SPECIALIZED OR CONFIDENTIAL SERVICES.**

- (1) Definition. Without limitation, the need to procure very specialized services, or services as a part of confidential matters, may arise when:
  - a. The City's needs are of a specific and highly specialized nature, and a general solicitation would not be beneficial to produce a Person who can meet those needs because of the scarcity of service providers, nature of the expertise needed, conflicts of interest, or other reason.
  - b. The services relate to confidential matters, and a solicitation process might disclose or result in adverse consequences with respect to information that is private or confidential. These matters can arise in connection with legal issues, security issues, undercover police activities, and similar matters.
  - c. The product or service is only available on a very limited or one-time only basis.
- (2) Process. To procure on this basis, the Purchasing Agent shall place a written determination in the procurement file stating the required service, and explaining why a solicitation process would not be beneficial or would damage confidential interests. The Purchasing Agent, Department Head, or Employee designated by Department Head, shall negotiate and use all appropriate means to obtain the best price available.



**(Ord. No. 03-07 Added 01/21/2003; Ord. No. 09-14 Amended 05/31/2009)**

### **5-3-112. EMERGENCIES, PUBLIC THREATS AND UNFORSEEN CONDITIONS.**

- (1) Generally. Notwithstanding any other provisions of this Ordinance, the Purchasing Agent may make, or authorize others to make, emergency procurement of supplies, services, or construction items when there exists a threat to public health, welfare, or safety; provided that procurement in response to such Emergencies, Public Threats or Unforeseen Conditions shall be made with such competition as is practicable under the circumstances. Procurement made on this basis shall be issued as set forth in this Section.
- (2) Definitions. The conditions specified in this Section are defined as follows:
  - a. Emergency Conditions. An emergency condition creates an immediate and serious need for supplies or services that cannot adequately be addressed using normal procurement methods. Such a need may arise by reason of a natural disaster, epidemic, riot, equipment failure or other reason.
  - b. Public Threats. Public threats are circumstances that appear likely to adversely impact the public's health, welfare, convenience or safety. They may arise when circumstances appear to create a risk of environmental contamination, traffic congestion or hazards, disruption of utility or other public services provided by the City, or other matters.
  - c. Unforeseen Condition. An unforeseen condition creates a need to procure supplies or services within time frames that could not reasonably be anticipated or accommodated under normal procurement methods.
- (3) Process. The Purchasing Agent shall examine the circumstances and determine whether they constitute a condition set forth above. If so, the Purchasing Agent may take any action required by such condition. The Purchasing Agent shall place in the procurement file a written determination and explanation of the condition. Procurement should be as competitive as possible under the circumstances, but priority shall be given to meeting the needs of the emergency or combating the public threat. Only those supplies and services impacted by the condition in question may be acquired under this Section.

**(Ord. No. 03-07 Added 01/21/2003)**

### **5-3-113. CLASS "C" ROAD IMPROVEMENT PROJECTS.**

All Class "C" road improvements, construction, repair and maintenance shall be procured as required by the Utah Code Annotated, 1953 as amended, which are hereby adopted by reference.

**(Ord. No. 03-07 Added 01/21/2003; Ord. No. 09-14 Amended 05/31/2009)**

### **5-3-114. DESIGN BUILD TRANSPORTATION PROJECT CONTRACTS.**

A design-build transportation project that has an estimated cost of at least \$50,000,000 shall be procured as required by the Utah Code Annotated, 1953 as amended which is hereby adopted by reference.

**(Ord. No. 03-07 Added 01/21/2003; Ord. No. 09-14 Amended 05/31/2009)**



**5-3-115. BUILDING IMPROVEMENTS AND PUBLIC WORKS PROJECTS.**

Any Building Improvements or Public Works Project shall be procured pursuant to Section 11-39-101 et seq of the Utah code Annotated, 1953 as amended.

**(Ord. No. 03-07 Added 01/21/2003; Ord. No. 09-14 Amended 05/31/2009)**

**5-3-116. MUNICIPAL BUILDING AUTHORITY PROJECTS.**

Purchases for construction projects by the City's Municipal Building Authority are governed by Title 17A, Chapter 3, Part 9 of the Utah Code Annotated 1953, as amended, which is hereby adopted by reference.

**(Ord. No. 03-07 Added 01/21/2003)**

## **CHAPTER 5-4 APPEALS AND REMEDIES**

Sections:

- 5-4-101. Procurement Protests.  
5-4-102. Remedies for Solicitations or Awards in Violation of Law.
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### **5-4-101. PROCUREMENT PROTESTS.**

- (1) Any actual or prospective bidder or offeror who is aggrieved in connection with the solicitation or award of a contract for procurement may protest the procurement by filing a written protest with the Purchasing Agent. The protest shall contain the following information:
- a. The protesting party's name, mailing address and daytime telephone number, the signature of the protesting party or the attorney for the protesting party, and the date the protest is signed; and
  - b. The relief sought, a statement of facts and a recitation of the reasons and legal authority in support of the protest sufficient to permit review.
  - c. Protests shall be submitted prior to the closing date for receiving bids or proposals unless the protestor did not know and could not reasonably have known of the facts giving rise to the protest prior to such time, but in any event, all protests shall be submitted within five business days after the closing date for receiving bids or proposals.
  - d. The City may proceed with the procurement except that the Purchasing Agent may suspend the procurement process for so long as he or she determines is appropriate.
  - e. The Purchasing Agent may designate another individual to assist in reviewing the matter, which assistance may include finding facts, analyzing the protest, and making recommendations to the Purchasing Agent.
  - f. The Purchasing Agent or the Purchasing Agent's designated representative may request additional information from the protesting party or from other persons to make a determination. The protesting party shall provide all information requested by the Purchasing Agent reasonably needed to decide the protest except information which is protected from disclosure by law, or which could reasonably be expected to result in unfair competitive injury to the protestor in spite of the protections for the protestor provided by law.
  - g. The Purchasing Agent shall review and decide protests, and shall issue a written determination to the protesting party within fifteen business days of receipt of the protest.
  - h. The protesting party may appeal the written decision of the Purchasing Agent by filing a written appeal with the City Manager within five business days of the Purchasing Agent's written determination. The notice of appeal shall contain the following information:
    - i. The appellant's name, mailing address and daytime telephone number, the signature of the appellant or of the attorney for the appellant, and date; and
    - ii. The relief sought, a statement of facts and a recitation of the reasons and legal authority in support of the protest sufficient to permit review.

- i. The City Manager shall review and hear the appeal. No later than five business days after receiving a notice of appeal, the City Manager shall schedule a hearing on the appeal. Unless otherwise agreed to by the City and the appellant, the hearing shall be held no sooner than five business days and not later than thirty business days from the date of the filing of the appeal.
- j. At the hearing before the City Manager, the appellant and the City's representative shall be allowed to testify, present evidence, and comment on the issues. The City Manager may allow other interested persons to testify, comment or provide evidence on the issues.
- k. No later than fifteen business days after the hearing, the City Manager shall issue a signed order either granting the appeal in whole or in part, or upholding the determination of the Purchasing Agent in whole or in part. The order of the City Manager shall include:
  - i. The decision, and any reasons for the decision the City Manager may wish to provide; and
  - ii. A statement that any party to the appeal may appeal the decision to the State District Court.
- l. If the City Manager fails to issue a decision within fifteen business days after the hearing, said failure shall be considered the equivalent of an order denying the appeal.
- m. The City Manager may appoint a Person other than the Purchasing Agent to fulfill his or her respective responsibilities described in this Section.

**(Ord. No. 03-07 Added 01/21/2003)**

#### **5-4-102. REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW.**

- (1) Prior to Bid Opening or Closing Date for Receipt of Proposals. If prior to the bid opening or the closing date for receipt of proposals, the Purchasing Agent, after consultation with the City Attorney, determines that a solicitation is in violation of federal, State, or local law, then the solicitation or proposed award shall be canceled or revised to comply with applicable law.
- (2) Prior to Award. If after a bid opening or the closing date for receipt of proposals, the Purchasing Agent, after consultation with the City Attorney, determines that a solicitation or a proposed award of an agreement is in violation of federal, State, or local law, then the solicitation or proposed award shall be canceled.
- (3) After Award. If after an award, the Purchasing Agent, after consultation with the City Attorney, determines that a solicitation or award of an agreement was in violation of applicable law, then:
  - a. If the person awarded the agreement has not acted fraudulently or in bad faith:
    - i. the agreement may be ratified and affirmed, provided it is determined that doing so is in the best interests of the City; or
    - ii. the agreement may be terminated and the person awarded the agreement shall be compensated for the actual costs reasonably incurred under the agreement, plus a reasonable profit, prior to the termination; or
  - b. If the person awarded the agreement has acted fraudulently or in bad faith the agreement may be declared null and void or voidable, if such action is in the best interests of the City.
- (4) Acting in Violation of this Ordinance. Any violation of this Ordinance shall be grounds for disciplinary action, and civil and criminal prosecution at the discretion of the City.

**(Ord. No. 03-07 Added 01/21/2003)**